

# **Town Planning Committee Meeting**

## **Agenda**

Monday 2 June 2025

Commencing 7:00 PM

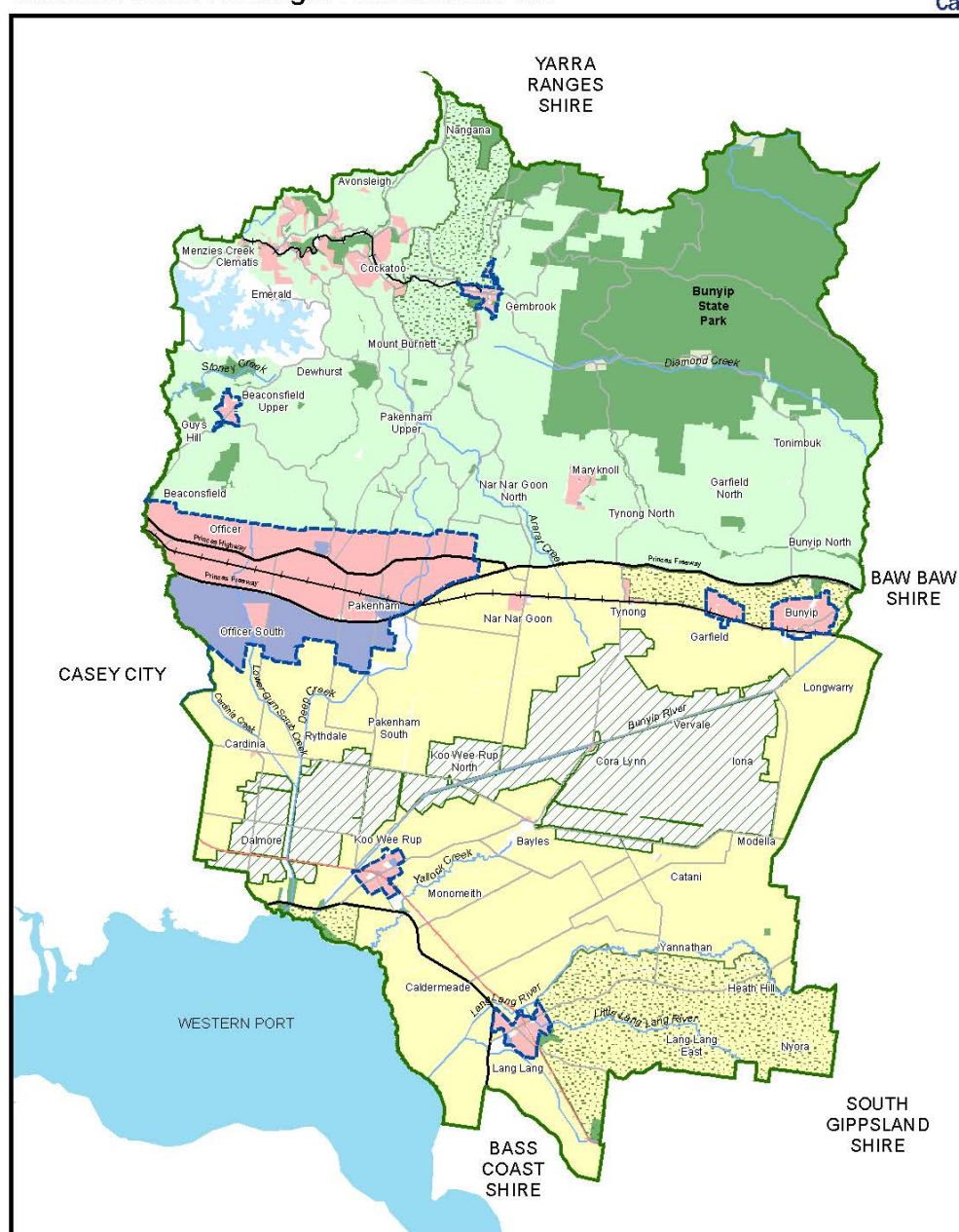
Council Chambers  
20 Siding Avenue, Officer  
Victoria

The Cardinia Shire Strategic Framework Plan (Figure 1) sets out the general pattern for land use and development to respond to the key influences and issues to achieve the strategic vision for the municipality.

The purpose of the framework is to provide an overview of land use in the Cardinia Shire and to identify locations where specific land use outcomes will be supported and promoted.

Figure 1:

### Cardinia Shire Strategic Framework Plan



Printed: 24-Oct-18 Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL

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## Town Planning Committee Meeting

Monday 2 June 2025 at 7:00 PM.

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**Members:** Cr Jack Kowarzik Mayor  
Cr Alanna Pomeroy Deputy Mayor  
Cr Liz Roberts  
Cr Samantha-Jane Potter  
Cr Casey Thomsen  
Cr David Nickell  
Cr Collin Ross  
Cr Brett Owen  
Cr Trudi Paton

**Officers:** Carol Jeffs Chief Executive Officer  
Peter Benazic General Manager Infrastructure and Environment  
Debbie Tyson General Manager Community & Planning Services  
Wayne Mack General Manager Corporate Services  
Peter Harris Manager Governance, Safety & Property  
Duncan Turner Manager Planning & Design  
Natasha Berry Senior Governance Officer

Dear Councillor,

You are advised that a meeting will be held in the **Council Chambers, Cardinia Shire Council Civic Centre, 20 Siding Avenue, Officer** on **Monday 2 June 2025** commencing at **7:00 PM**.

Carol Jeffs

CHIEF EXECUTIVE OFFICER



## Order of Business

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## **1 Opening And Reflection**

I would ask those gathered to join us now for a few moments of silence as we reflect on our roles in this chamber. Please use this opportunity for reflection, Prayer or thought, to focus on our shared intention to work respectfully together for the well-being of our whole community.

## **2 Acknowledgements**

Cardinia Shire Council acknowledges that we are on the traditional land of the Bunurong and Wurundjeri people and pay our respects to their elders past, present and emerging.

## **3 Apologies**

## **4 Declaration Of Interests**

## 5 Ordinary Business

### 5.1 T240525 PA - VARIATION OF COVENANT AT 151 BLUE HORIZONS WAY PAKENHAM

Responsible GM:	Debbie Tyson
Author:	Lori Zhang
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	Not applicable.

#### Recommendation

That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T240525 for the Variation of Covenant AH232156Q on Lot 504 of PS547240 at L504 PS547240, 151 Blue Horizons Way, Pakenham VIC 3810 on the following grounds:

- That pursuant to Section 60(2) of the *Planning and Environment Act 1987*, the Responsible Authority is not satisfied that the variation of Covenant AH232156Q will be unlikely to cause the owner of any land benefited by the Covenant any detriment relating to:
  - Financial loss; or
  - Loss of amenity; or
  - Loss arising from change to the character of the neighbourhood; or
  - Any other material detriment.
- The proposed covenant variation is inconsistent with the decision guidelines of Clause 52.02 as the interests of affected parties benefitting from Covenant AH232156Q are likely to suffer material detriment as a result of the variation.

#### Application Details

APPLICATION NO.:	T240525
APPLICANT:	Mr Luke Reddie M.J.Reddie Surveys Pty Ltd
LAND:	L504 PS547240 V11197 F219 151 Blue Horizons Way, Pakenham VIC 3810
PROPOSAL:	Variation of Covenant AH232156Q on Lot 504 of PS547240
PLANNING CONTROLS:	Zone: <ul style="list-style-type: none"> <li>General Residential Zone - Schedule 1</li> </ul> Overlay: <ul style="list-style-type: none"> <li>Development Contributions Plan Overlay - Schedule 1</li> </ul> Particular provision:

	<ul style="list-style-type: none"> <li>Clause 52.02 Easements, Restrictions and Reserves (A permit is required to proceed under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant)</li> </ul>
<b>NOTIFICATION &amp; OBJECTIONS:</b>	<p>Notice of the application was given pursuant to Section 52 of the <i>Planning and Environment Act 1987</i>, by mailing notices to surrounding landowners and beneficiaries of the Covenant, placing two (2) signs on the land and placing a notice in the Pakenham Gazette (local newspaper).</p> <p>Three (3) objections were received.</p>
<b>KEY PLANNING CONSIDERATIONS:</b>	<p>The requirements of Section 60(2) of the <i>Planning and Environment Act 1987</i></p> <p>The decision guidelines in Clause 52.02 and Clause 65</p> <p>The detriment to beneficiaries of the Restrictive Covenant AH232156Q</p> <p>Existing neighbourhood character</p>
<b>REASON FOR MEETING</b>	Recommendation for refusal
<b>RECOMMENDATION:</b>	Notice of Decision to Refuse to Grant a Permit

### Executive Summary

The purpose of this report is to consider an application for the Variation of Covenant AH232156Q on Lot 504 of PS547240.

Restrictive covenants are a property law right that are created by developers/landowners and operate in addition to public planning controls. As stated in [Bufalino v Darebin CC \[2019\] VCAT 237](#) at paragraph 43:

*'...restrictive covenants are a property law right that limits development and so contributes to people's expectations as to what level or extent of density and development will occur in this area. The restrictive covenants have played a role in creating a neighbourhood character for (in terms of these covenants) this part of the Merrilands Estate, and having heard from the objectors in this case, this property right is valued by at least some of the residents. Given the presence of the restrictive covenants, it is understandable that the beneficiaries of these restrictive covenants might have different expectations to that of other people, without such protections, around Melbourne.'*

The planning system in Victoria provides an avenue for landowners apply to remove or vary a covenant through a planning application. These applications are subject to specific requirements under the Planning & Environment Act which set a high bar for approvals when beneficiaries object.

Restrictive Covenant AH232156Q restricts (amongst other things) the use and development of the subject parcel of land for more than one dwelling, and the re-subdivision of the land into small lots.

The variation being sought would allow the following (subject to a future planning application):

- Construct more than one (1) dwelling, with no requirements for clear floor area or for outer walls' materials and finishes;
- Re-subdivide the land into small allotments; and
- Construct more than one dwelling house and enable the transfer of the lot be used as a road, access way, carriageway easement, cross over and any other purposes whatsoever.

The decision guideline of Clause 52.02 requires that before deciding on an application, the responsible authority must consider the interests of affected people. Notice of the application was given to all beneficiaries. Three (3) objections from the owners of the land benefited by the Covenant have been received to date.

The objectors raised their concerns about their potential loss in property value, amenity and loss arising from change to the character of the neighbourhood by allowing the potential future development of the land that would be out of character for the area and not an expectation they had for the 'estate' as set by the covenant.

The application to vary the covenant is in the absence of an actual development proposal lodged with the Council. The variation of the covenant from Lot 504 would enable a planning application to increase the number of dwellings and the re-subdivision of the land into small lots.

It is considered that the proposal will detract from the existing prominent character of the area, largely comprising of single storey dwelling on a lot generally in excess of 650 square metres in lot size. The proposal of variation of Covenant would lead to a loss of amenity and loss of existing prominent character.

Therefore, the interests of affected people (being the owners of the land benefited by the Covenant), will likely to be adversely affected, and the benefitting lots are likely to suffer the losses or detriment identified in Section 60(2)(a) to (d) of the *Planning and Environment Act 1987*. The proposal is inconsistent with the decision guidelines of Clause 52.02 as material detriment expressed by beneficiaries is likely to occur.

Based on this, the proposal will result in an unacceptable planning outcome that is inconsistent with the requirements in Section 60(2) of the *Planning and Environment Act 1987*, Clause 52.02 and Clause 65 of the Cardinia Planning Scheme.

It is recommended that Council determine to refuse to grant a planning permit.

### **Confidential Attachments**

The Confidential Attachment (listed in Attachments section) – Confidential Attachment 4 - T240525 PA - Objections - Redacted – is designated confidential information pursuant to the Act, s.3(1)s.3(1)(f) Personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs..

### **Attachments**

1. Attachment 1 - T240525 PA - Officer Report - Refusal [5.1.1 - 17 pages]
2. Attachment 2 - T240525 PA - Locality Map [5.1.2 - 1 page]
3. Attachment 3 - T240525 PA - Covenant AH232156Q and supporting documents [5.1.3 - 14 pages]
4. Confidential Attachment 4 - T240525 PA - Objections - Redacted [5.1.4 - 6 pages]

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## NOTICE OF DECISION TO REFUSE TO GRANT A PLANNING PERMIT OFFICER REPORT



### Application Details

Proposal:	Variation of Covenant AH232156Q on Lot 504 of PS547240
Application Number:	T240525
Property Number:	5000006096
Address:	L504 PS547240 V11197 F219 151 Blue Horizons Way, Pakenham VIC 3810
Applicant:	Mr Luke Reddie M.J.Reddie Surveys Pty Ltd
Date Received:	08 October 2024
Statutory Days:	41 days as of 7 May 2025
Planner:	Lori Zhang
Decision	<input checked="" type="checkbox"/> Refusal
Plans to Endorse:	<input checked="" type="checkbox"/> No (refusal)

### Application Processing

Can the application be decided under delegation?	<input checked="" type="checkbox"/> No
Have any amendments been made to the application?	<input checked="" type="checkbox"/> Yes, application was amended pursuant to Section 50 of the <i>Planning and Environment Act 1987</i> , received on <a href="#">24 February 2025</a> , to amend the application to change the proposal from 'subdivision of the land into two (2) lots and removal of covenant' to 'variation of covenant, to remove condition a, f & g of the covenant'.

### Proposal

Description of proposal:

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The proposal seeks approval for variation of a restrictive Covenant AH232156Q on Lot 504 of PS547240.

The Covenant was registered on 18 May 2010.

To summarise, Covenant AH232156Q prohibits the construction of more than one dwelling on the land and requires the dwelling having a clear floor area of not less than 18 squares and the outer walls constructed of brick, brick veneer or new weather board, re-subdivision of the land into small allotments and allow the lot to be used as a road, access way, carriageway easement, cross over and any other purposes whatsoever.

The proposal seeks to vary the covenant by removing restriction a, f, and g of the Covenant AH232156Q. No other changes to the Covenant are proposed.

The applicant wishes to vary the Covenant to enable them to subdivide the land.

### Images of relevant plans:

#### Panel Heading

"AND the said Transferees for themselves, their heirs, executor administrators and Transferees the registered proprietor or proprietors for the time being of the land hereby transferred and every part thereof (hereinafter referred to as "The Transferees") DO HEREBY and as a separate Covenant COVENANT with the said Transferor its successors, assigns and transferees and others the registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision No. 515599K and every part or parts thereof (other than the lot hereby transferred) that the Transferees will not, and the Transferees hereby Covenant that they will not:

- a) Erect or cause to be erected or allow to remain on the lot hereby transferred any dwelling other than one dwelling the plans for which have been approved by the transferor and having a clear floor area of not less than 18 squares including exterior walls but excluding verandahs, garages and outbuildings and with the outer walls thereof being constructed of brick, brick veneer or new weather board (excluding a portable home).
- b) Erect or construct a roof other than one which is constructed of tiles, slate or colourbond unless the type colour and materials are approved of in writing by the transferor.
- c) Erect or cause to be erected or allow to remain on the lot herein transferred any garage or carport other than a garage or carport which is of brick or brick veneer constructions;
- d) Erect or cause to be erected or allow to remain on the lot hereby transferred any other type of shed including garden shed of a size greater than four squares;
- e) Keep within the boundaries of the lot hereby transferred more than two of any species of animal or bird;
- f) Cause or allow the lot hereby transferred to be re-subdivided into small allotments either by way of Plan of Subdivision, Strata Subdivision or Cluster Titles.
- g) Erect or cause to be erected more than one dwelling house or allow the lot hereby transferred to be used as a road, access way, carriageway easement, cross over or for any other purposes whatsoever.
- h) Erect or construct the dwelling, garage or outbuilding within 5 meters of the front boundary of the lot hereby transferred.

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### ANNEXURE PAGE

Transfer of Land Act 1958

Approved Form A1  
Victorian Land Titles Office

This is page 2<sup>4</sup> of Approved Form T2 dated 4/5/10 between Thuy Thi Nhu  
Diem Bui and Decleah Investments Pty Ltd ACN 100 717 911

Signatures of the parties

#### Panel Heading

- i) Erect or construct a fence on any part of the land whose boundaries adjoin any land owned by the transferor unless such fence is erected at a cost of no more than \$1.00 to the transferor.
- j) Erect or construct any fence on the side boundaries hereby transferred unless the materials are of brick, brick rendered, Colourbond or brush with timber capping. Fence colour to be Colourbond Domain, (if Colourbond fencing is used).
- k) Allow or cause the dwelling constructed on the lot hereby transferred to be used for display house purposes without the written consent of the transferor.
- l) For a period of 18 months from the date hereof erect or permit to be erected any notice, signboard or other display advertised or indicating that the lot is hereby transferred is or may be for sale provided that this covenant shall not apply to the advertising for sale of a house erected on the lot hereby transferred.
- m) Allow or cause any truck or heavy vehicle to be parked on the lot hereby transferred or in the street abutting or adjoining the lot hereby transferred.
- n) Allow the landscaping on the lot hereby transferred to deteriorate and to maintain the same on a quarterly basis.

AND it is intended that this Covenant shall appear as an encumbrance affecting the same and every part thereof on the Certificate of Title to be issued in respect to the lot hereby transferred.

Figure 1: Covenant AH232156Q



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### Land Details

<b>Description of site and surrounding area:</b>	<p>The irregular-shaped site is located on the north-west side of Blue Horizons Way and on the west side of Aqua Court and measures 724 square metres. It has a frontage of 14.86 metres facing Blue Horizons Way and a depth of 32.55 metres along Aqua Court.</p> <p>The site currently contains one (1) existing dwelling, few vegetation and a garden shed on the site.</p> <p>A crossover is located along south-eastern boundary of the site (frontage) at the south-western corner.</p> <p>There is a sewerage easement E-2 to the north-western corner of the site with a width of 2 metres and a length of 2.5 metres.</p> <p>The topography of the land is relatively flat.</p> <p>The site is located in an established residential area of Pakenham where development largely consists of one detached dwelling on a lot generally in excess of 650sqm in overall lot size.</p> <p>The main characteristics of the surrounding area are:</p> <ul style="list-style-type: none"> <li>• <b>North-west:</b> To the north-west at 2 Aqua Court is developed with a single dwelling and outbuildings. Further north-west and north at 3,4 and 5 Aqua Court are developed with a single dwelling on a lot and associated outbuildings.</li> <li>• <b>East:</b> To the east is Aqua Court, further east are 153 Blue Horizons Way and 6 Aqua Court which both developed with a single dwelling and outbuildings.</li> <li>• <b>South-east:</b> To the south-east is Blue Horizons Way, further south-east at 170, 172 and 174 Blue Horizons Way are developed with a single dwelling.</li> <li>• <b>South-west:</b> To the south-west at 149 Horizons Way is developed with a single dwelling and an outbuilding. Further south-west at 147 Horizons Way is developed with a single dwelling, 145 Horizons Way is currently vacant.</li> </ul>
<b>Permit/Site History:</b>	<p>There is no relevant history for the site.</p>
<b>Aerial photo of site:</b>	

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*Figure 3: Aerial photo of the subject site (Nearmap 4 March 2025)*

Aerial photo of surrounding area:

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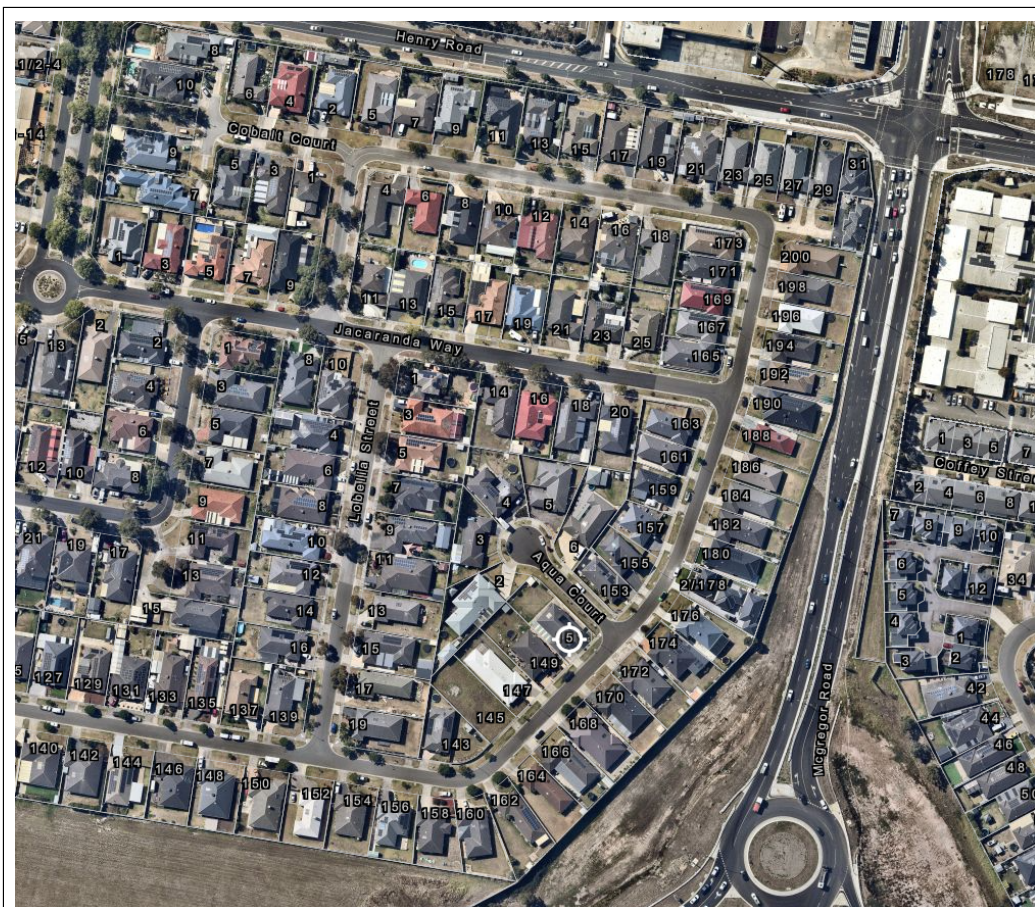


Figure 4: Aerial photo of the surrounding area (Nearmap 4 March 2025)

Aboriginal Cultural Sensitivity:	<input checked="" type="checkbox"/> No	
Zoological/ Botanical significance?	<input checked="" type="checkbox"/> None	
Restrictive covenants or section 173 agreements:	<input checked="" type="checkbox"/> Yes, list/describe below:	
	<ul style="list-style-type: none"> <li>Covenant AH232156Q registered on 18/05/2010.</li> <li>Section 173 Agreement X688217L registered on 22/08/2001.</li> </ul>	
	Would the grant of a permit breach a restriction?	
	<input checked="" type="checkbox"/> No	



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	<p>Section 173 Agreement X688217L is an agreement between Prince Removal &amp; Storage Pty Ltd and Cardinia Shire Council. The agreement relates to rezoning, special charges and access. The proposal does not breach the requirements of Section 173 Agreement X688217L.</p> <p>Restrictive Covenant AH232156Q is the restriction which is the subject of this application.</p> <p>Discussion of the restriction is provided in the assessment section of this report.</p>
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## Planning Provisions

<b>Zoning:</b>	General Residential Zone - Schedule 1
<b>Overlays:</b>	Development Contributions Plan Overlay - Schedule 1
<b>Other Provisions / Documents:</b>	<p>Other provisions and documents relevant to the assessment of the application include:</p> <ul style="list-style-type: none"> <li>• Clause 52.02 Easements, Restrictions and Reserves</li> <li>• Clause 65 Decision Guidelines</li> <li>• Clause 66 Referral and Notice Provisions</li> <li>• Clause 71.02-3 Integrated Decision Making</li> <li>• <a href="#">Castles v Bayside CC [2004] VCAT 864</a></li> <li>• <a href="#">Bufalino v Darebin CC [2019] VCAT 237</a></li> </ul>
<b>Planning Policy Framework (including LPPF)</b>	<p>The planning policies that are relevant to the assessment of the application include:</p> <ul style="list-style-type: none"> <li>• Clause 11 Settlement <ul style="list-style-type: none"> <li>○ 11.01 Victoria <ul style="list-style-type: none"> <li>▪ 11.01-1S Settlement</li> </ul> </li> <li>○ 11.02 Managing Growth <ul style="list-style-type: none"> <li>▪ 11.02-1S Supply of Urban Land</li> </ul> </li> </ul> </li> <li>• Clause 15 Built Environment and Heritage <ul style="list-style-type: none"> <li>○ 15.01 Built Environment <ul style="list-style-type: none"> <li>▪ 15.01-1S Urban Design</li> <li>▪ 15.01-2S Building Design</li> <li>▪ 15.01-5S Neighbourhood Character</li> </ul> </li> </ul> </li> <li>• Clause 16 Housing <ul style="list-style-type: none"> <li>○ 16.01 Residential Development</li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>▪ 16.01-1S Housing supply</li> <li>• Clause 21 Municipal Strategic Statement           <ul style="list-style-type: none"> <li>○ 21.03 Settlement and Housing               <ul style="list-style-type: none"> <li>▪ 21.03-2 Urban Established Area – Beaconsfield and Pakenham</li> </ul> </li> </ul> </li> </ul>
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## Permit Triggers

A permit is required for the following reasons:

### Easements, Restrictions and Reserves

Clause 52.02 - To proceed under Section 23 of the *Subdivision Act 1988* to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.

## Notice

Notice of the application was given pursuant to section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to owners and occupiers of adjoining land and owners of land that benefit the registered restrictive covenant.
- Placing two (2) signs on site.
- Placing [a notice in the Pakenham Gazette](#) on [26 March 2025](#).

## Objections/Submissions

Council has received three (3) objections. The key issues raised include:

- Financial loss (reduction in property values)
- Loss of amenity (increased demand for on-street parking, increased traffic, overshadowing issue, overlooking issue; loss of suburban feel)
- Loss arising from change to the character of the neighbourhood (properties were purchased under the impression that everyone must abide by the covenant, the proposal will change the subdivision pattern of the area)
- Environmental concerns (habitat destruction and a loss of green space)

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### External Referrals/Notice

Referral Authority	Type	Advice/response/conditions:
N/A		

### Internal Referrals

Internal Referral Department	Advice/response/conditions:
N/A	

### Assessment

The application is for Variation of Covenant AH232156Q on Lot 504 of PS547240, which requires a planning permit under the provisions of the Clause 52.02 Easements, Restrictions and Reserves.

The key considerations of this application relate to:

- The relevant policies of the Planning Policy Framework.
- The Clause 52.02 Easements, Restrictions and Reserves.
- The matters under Section 60 of the *Planning and Environment Act 1987*.
- Response to objections.
- The non-compliance with the decision guidelines in Clause 65.

An assessment of these matters is provided below.

#### Planning Policy Framework (PPF)

Given the proposal seeks only to vary a restriction on title, policies within the PPF are considered to be of limited relevance to the proposal. Further, the decision guidelines within the permit requirement (Clause 52.02 - Easements, Restrictions and Reserves) do not require consideration of the Municipal Strategic Statement or PPF.

#### General Residential Zone - Schedule 1

No permit is required to vary a restriction under the provisions of Clause 32.08 (General Residential Zone – Schedule 1). It is noted that the application does not propose the subdivision of land at this stage, only the variation of the covenant to allow for a future subdivision application to be made.

#### Development Contributions Plan Overlay - Schedule 1

No permit is required to vary a restriction under the provisions of Clause 45.06 (Development Contributions Plan Overlay – Schedule 1). It is noted that the application does not propose the subdivision of land at this stage, only the variation of the covenant to allow for a future subdivision application to be made.

#### Clause 52.02 Easements, Restrictions and Reserves

Notice of Decision to Refuse to Grant a Planning Permit  
Officer Report

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The purpose of Clause 52.02 is:

*'To enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered.'*

Further, the sole decision guideline of the provision is as follows:

*'Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people'.*

Given the above, an assessment and list of the beneficiaries of the Covenant is provided below. The map below (Figure 5), prepared by a suitably qualified legal professional, detailing the beneficiaries are all the land within the borders highlighted yellow, and the land highlighted blue has the burden of said Covenant AH232156Q.





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*Figure 5: Beneficiaries of Covenant AH232156Q highlighted yellow, burdened land highlighted blue  
(Source: Feigl & Newell Pty Ltd)*

The proposal is for variation of covenant via removal of restriction a, f, and g in Covenant AH232156Q.

The text of the Restriction a, f, and g of Covenant AH232156Q is as follows:

"AND the said Transferees for themselves, their heirs, executor administrators and Transferees the registered proprietor or proprietors for the time being of the land hereby transferred and every part thereof (hereinafter referred to as "The Transferees") DO HEREBY and as a separate Covenant COVENANT with the said Transferor its successors, assigns and transferees and others the registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision No. 515599K and every part or parts thereof (other than the lot hereby transferred) that the Transferees will not, and the Transferees hereby Covenant that they will not:

- a) Erect of cause to be erected or allow to remain on the lot hereby transferred any dwelling other than one dwelling the plans for which have been approved by the transferor and having a clear floor area of not less than 18 squares including exterior walls but excluding verandahs, garages and outbuildings and with the outer walls thereof being constructed of brick, brick veneer or new weather board (excluding a portable home).
- f) Cause or allow the lot hereby transferred to be re-subdivided into small allotments either by way of Plan of Subdivision, Strata Subdivision or Cluster Titles.
- g) Erect or cause to be erected more than one dwelling house or allow the lot hereby transferred to be used as a road, access way, carriageway easement, cross over or for any other purposes whatsoever.

As stipulated by the applicant, the purpose of varying the covenant is to partially remove restrictions of the covenant that will affect the ability to subdivide the land in future.

The variation would allow the following (subject to a future planning application):

- Construct more than one (1) dwelling, with no requirements for clear floor area or for outer walls' materials and finishes;
- Re-subdivide the land into small allotments; and
- Construct more than one dwelling house and to transfer the lot be used as a road, access way, carriageway easement, cross over and any other purposes whatsoever.

The subject site is located within an established residential area of Pakenham, largely comprising of a single storey dwelling on a lot generally in excess of 650sqm in area.

There have been no multi-dwelling or subdivision application approved for all benefited lots in Plan of Subdivision PS547240.

Historically, there have been no variation or removal of the Covenant applications received or approved by Council for the benefitted lots in Plan of Subdivision PS547240.

Within the surrounding area 178 Blue Horizons Way, Pakenham and 31 and 33 Sapphire Crescent Pakenham have been developed with multi-dwellings. However, it is noted that these parcels are on a separate plan of subdivision (now PS526696 and PS815241, but shown on PS547240 as Lot 'M') and are not burdened by Covenant AH232156Q (registered on Plan of Subdivision PS547240):

- The 'Construction of three (3) dwellings on a lot' was approved under [Planning Permit T160310](#) at 178 Blue Horizons Way, Pakenham. It is important to note that 178 Blue

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Horizons Way Pakenham, as a benefited lot of Covenant AH232156Q, [is not subject to the same Covenant](#) (AH232156Q). Therefore, this example is not applicable to the subject site and the proposal.

- The development of the land for two (2) dwellings at LM PS547240, Henry Road, Pakenham VIC 3810 (a benefited lot of Covenant AH232156Q, now known as 31 and 33 Sapphire Crescent Pakenham) was approved under [Planning Permit T170004](#) and the land also is not subject to Covenant AH232156Q, as specified in the [delegate report](#). Therefore, this example is also not applicable to the subject site and the proposal.

Clause 52.02 requires that before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

In order to consider their interests, in accordance with the requirements of section 52(1)(cb) of the *Planning and Environment Act, 1987*, notice of the application was given to all above beneficiaries. Three (3) objections from the owners of the land benefited by the Covenant have been received to date.

Therefore, it is considered that the interests of affected people (being the owners of the land benefited by the Covenant), will likely to be adversely affected, as the benefitting lots are likely to suffer the losses or detriment identified in s 60(2)(a) to (d) of the *Planning and Environment Act 1987*.

Additional consideration of effects of the proposed variation is provided below in response to Section 60 of the *Planning and Environment Act 1987*.

Based on this, the proposed variation is considered to achieve an unacceptable outcome with regard to the purpose and decision guideline within Clause 52.02.

### Section 60 of the *Planning and Environment Act 1987*

Under the provisions of the *Planning and Environment Act, 1987* specific criteria are prescribed when assessing an application to vary or remove a covenant. The criteria to be used, depends on how and when the covenant was created.

In addition to the 'standard' matters the responsible authority must consider in Section 60 (1), Section 60 (2) provides additional considerations for applications to remove or vary a restriction, which states:

*The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer—*

- (a) *financial loss; or*
- (b) *loss of amenity; or*
- (c) *loss arising from change to the character of the neighbourhood; or*
- (d) *any other material detriment—*

*as a consequence of the removal or variation of the restriction.*

This 'test' is discussed in detail in later sections.

Further, Section 60 (4) provides that:

*Subsection (2) does not apply to any restriction which was—*

- (a) *registered under the [Subdivision Act 1988](#) ; or*

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(b) lodged for registration or recording under the [Transfer of Land Act 1958](#); or

(c) created—

before 25 June 1991.

The Covenant AH232156Q was registered on 18 May 2010, which is after 25 June 1991, therefore, Subsection (2) applies.

As discussed above, all beneficiaries were notified of the application to vary the covenant, including sending notices, placing two (2) signs on site and posting the application in the local paper (Pakenham Gazette).

Three (3) objections have been received to date with regard to the variation of the covenant.

The three (3) objectors are the owners of benefitted lots, as they are listed as beneficiaries of the Covenant. The objectors have stated that the proposal would cause material detriment to them. The key issues raised will be further discussed below.

Based on this, the proposal will result in an unacceptable planning outcome that does not demonstrate compliance with the requirements in Section 60 (2) of the *Planning and Environment Act 1987*.

### Response to Objections

Three (3) objections have been received in relation to this application, all of which are benefitted lots of the Covenant. Whilst it is noted that many of the objections refer to a 'subdivision of land or construction of multiple dwelling', which at first appears like they are misinformed (as the application only relates to the variation of the covenant). However, of the objections contain specific reference to the covenant and include concerns around the potential outcomes that may result from a variation to the covenant and the expectations for the 'estate' that they had when purchasing the land with a covenant.

The objectors' concerns are summarised and addressed below (in response to Section 60(2) of the *Planning and Environment Act, 1987*):

#### a) *Financial loss, through the impact on property value:*

In [Castles v Bayside CC \[2004\] VCAT 864](#) at paragraph 33 the Tribunal stated:

*'Property value is not, in itself, a planning consideration. Amenity questions are, and if values are affected by adverse amenity effects, then it is the amenity questions that must be considered, not their ramifications in terms of property values'.*

As above, Clause 52.02 does not require any consideration of economic interests and property values are not *normally* a planning consideration. However, as the application relates to the variation of a restrictive covenant, Section 60(2)(a) requires the consideration of whether or not the variation or removal of a covenant is likely to cause befitting lots to suffer financial loss. This objection statement is not considered vexatious or not made in good faith, instead, the objection statement is determined relevant to the consideration of the application.

As stated in [Bufalino v Darebin CC \[2019\] VCAT 237](#) at paragraph 43:

*'...restrictive covenants are a property law right that limits development and so contributes to people's expectations as to what level or extent of density and development will occur in this area. The restrictive covenants have played a role in creating a neighbourhood character for (in terms of these covenants) this part of the Merrilands Estate, and having heard from the objectors in this case, this property right is valued by at least some of the residents. Given the presence of the restrictive covenants, it is understandable that the beneficiaries of these restrictive*

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*covenants might have different expectations to that of other people, without such protections, around Melbourne.'*

The objectors in this case have raised concern that the variation to the covenant may result in loss of property value, by allowing the potential future development of the land that would be out of character for the area and not an expectation they had for the 'estate' as set by the covenant.

Based on this, the proposal is considered to fail this 'test'.

*b) Loss of amenity, through overshadowing and overlooking:*

The proposal does not seek to physically alter the way the subject land is used, developed and/or subdivided – there will be no 'on the ground' physical change to the land. Therefore, the proposal itself will not result in overshadowing and overlooking issue. The variation does not facilitate/pre-empt construction of additional dwellings on the lot, as a planning permit would be required to undertake this development. Notice of this application would again be required to be undertaken, at which time any detriment of this hypothetical change to the site could be considered. However, the concerns of the objectors identify the potential outcomes of the variation to the covenant, which could result in future development applications being made. This directly correlates to the expectations of 'amenity' which have been set by the covenant (*Bufalino v Darebin CC* [2019]), and which could be detrimentally impacted by its variation as sought.

*Loss of amenity, through increased traffic and reduced on-street parking:*

As above, the proposal itself does not result in an increase in the existing level of traffic in the area and increase the demand for on-street parking spaces, however it may if an increase in density occurred on the subject land, which could be sought via a future application if the variation is approved, again going back to the expectation of 'amenity' set by the covenant.

One objector stated that the current infrastructure, including water supply, sewerage and waste management, may not be equipped to accommodate the potential additional demand as a result of future development and subdivision of the land. Again, the proposal does not seek to physically alter the way the subject land is used, developed and/or subdivided – there will be no 'on the ground' physical change to the land. Therefore, the proposal itself will not result in adverse impacts on the capacity of existing infrastructure, but again allowing the variation has the consequence of allowing a future application to develop the land to be made, which is not commensurate with the amenity that the benefiting proprietors expect to be protected by the covenant.

The objectors in this case have raised concern that the variation to the covenant may result in loss of amenity, by allowing the potential future development of the land that would be out of character for the area and not an expectation they had for the 'estate' as set by the covenant.

Based on this, the proposal is considered to fail this 'test'.

*c) Loss arising from change to the character of the neighbourhood, through setting a precedent for future subdivision and intensification within the estate:*

The proposal for variation of the Covenant AH232156Q would allow for future applications to be made for the development and subdivision of the land into small allotments. While it may increase the housing supply in the area, the area will no longer present as spacious, large blocks containing one single detached dwelling on a lot, which is clearly evident in this area.

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This contradicts the predominant characteristic and subdivision pattern being a single dwelling presenting to the streetscape, as identified along Aqua Court, Blue Horizons Way, and also along Lobella Street, Jacaranda Way, Sapphire Crescent, Viola Avenue and Bluehills Boulevard in the surrounding areas, which has come to be expected by the beneficiaries of the covenant, as a result of the covenant.

There are two (2) examples of more than one dwelling on a lot development in this surrounding area, being 178 Blue Horizons Way, Pakenham and 31 and 33 Sapphire Crescent Pakenham. However, as discussed above, they are not subject to the same Covenant and they are by no means a dominant characteristic. Therefore, it is considered that it is unable to conclude that the variation of the covenant will not detrimentally affect the existing character and amenity of the area that is created by the covenant.

The objectors in this case have raised concern that the variation to the covenant may result in loss arising from change to the character of the neighbourhood by allowing the potential future development of the land that would be out of character for the area and not an expectation they had for the 'estate' as set by the covenant.

Based on this, the proposal is considered to fail this 'test'.

d) *Loss arising from any other material detriment - Environmental concerns (habitat destruction and loss of green space):*

As above, the proposal itself does not result in any 'on the ground' change. However, the proposal could result in an increase in the site coverage on the subject site and a decrease for the permeable area, if future development is proposed.

The objectors in this case have raised concern that the variation to the covenant may result in other material detriment (environmental concerns), by allowing the potential future development of the land that would be out of character for the area and not an expectation they had for the 'estate' as set by the covenant.

Based on this, the proposal is considered to fail this 'test'.

The Covenant restricts, including but not limited to, the use and development on a parcel of land to there being no more than one dwelling, and the re-subdivision of the land into small lots.

The proposal of variation of Covenant, in the absence of an actual development proposal lodged with the Council, could conceivably result in any of the 'restricted' matters occurring. The variation of Covenant from Lot 504 might result in any number of dwellings being constructed on that land and the re-subdivision of the land into small lots (albeit controlled by the Cardinia Planning Scheme).

There is a clear comparison between what the restrictive covenant is restricting or preventing from occurring, and what could occur on the subject land (Lot 504) after the variation of the Covenant. It is considered that the proposal will detract from the existing character of the area. The amenity and changes in the neighbourhood character of the area will be detrimentally affected if the Covenant is varied.

Overall, the proposal of variation of Covenant would lead to a loss of amenity and loss of existing prominent character. As such, it is considered the proposed variation of Covenant does not comply with the requirements of Section 60 (2) of the *Planning and Environment Act 1987* and should not be supported as material detriment expressed by beneficiaries is likely.

### Clause 65 – Decision Guidelines

The matters within Clause 65.01 and Clause 65.02 are of limited relevance to this application, given it seeks to vary a Covenant under the *Subdivision Act 1988*. Notwithstanding this, those that are applicable are echoed by other policy throughout the Scheme and *Planning and Environment*

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*Act 1987* and have therefore been considered throughout this report. As such, the proposal is considered an unacceptable planning outcome and is an unacceptable response to Clause 65.

### Conclusion

The proposal is an unacceptable planning outcome that does not demonstrate compliance with the relevant provisions of the Cardinia Planning Scheme and the *Planning and Environment Act 1987* and should therefore be refused.

### Decision

#### Refusal

Having considered all of the matters required under section 60 of the *Planning & Environment Act 1987* and the Cardinia Planning Scheme, it is decided that Council refuses to grant a permit for the land known and described as L504 PS547240 V11197 F219, 151 Blue Horizons Way Pakenham as per the following table and subject to the below grounds.

Planning scheme clause	Matter for which the permit has been refused
52.02	To proceed under Section 23 of the <i>Subdivision Act 1988</i> to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant

### Refusal Grounds

1. That pursuant to Section 60(2) of the *Planning and Environment Act 1987*, the responsible authority is not satisfied that the variation of Covenant AH232156Q will be unlikely to cause the owner of any land benefited by the Covenant any detriment relating to:
  - a. Financial loss; or
  - b. Loss of amenity; or
  - c. Loss arising from change to the character of the neighbourhood; or
  - d. Any other material detriment.
2. The proposed covenant variation is inconsistent with the decision guidelines of Clause 52.02 as the interests of affected parties benefitting from Covenant AH232156Q are likely to suffer material detriment as a result of the variation.





T240525 PA - Locality Map - 151 Blue Horizons Way,  
Pakenham

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1 : 1,321 at A4  
09-May-2025  
[View map online](#)



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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

## REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 11197 FOLIO 219

Security no : 124117543742R  
Produced 19/08/2024 12:26 PM

### LAND DESCRIPTION

Lot 504 on Plan of Subdivision 547240D.  
PARENT TITLE Volume 11164 Folio 773  
Created by instrument PS547240D 20/04/2010

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### REGISTERED PROPRIETOR

### ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AS805152L 12/12/2019  
WESTPAC BANKING CORPORATION

COVENANT AH232156Q 18/05/2010

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987  
X688217L 22/08/2001

### DIAGRAM LOCATION

SEE PS547240D FOR FURTHER DETAILS AND BOUNDARIES

### ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 151 BLUE HORIZONS WAY PAKENHAM VIC 3810

### ADMINISTRATIVE NOTICES

NIL

eCT Control 16320Q WESTPAC BANKING CORPORATION  
Effective from 12/12/2019

DOCUMENT END





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**TRANSFER OF LAND**

Section 45 Transfer of Land Act 1958

Lodged by:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Ref: \_\_\_\_\_

Customer Code: \_\_\_\_\_

Scott Ashwood P/L

Code 1557Q

**AH232156Q**

18/05/2010

\$501

45



MADE AVAILABLE / CHANGE CONTROL

Office Use Only

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed-

- together with any easements created by this transfer;
- subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and
- subject to any easements reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land: (volume and folio reference)

Certificate of Title Volume 11197 Folio 219

Estate and Interest: (e.g. "all my estate in fee simple")

All its estate in fee simple

Consideration: \_\_\_\_\_

Transferor: (full name)

Creation and/or Reservation and/or Covenant

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Continued on T2 Page 2.

Approval No. 325955A

ORDER TO REGISTER

Please register and issue title to

**T2**

Signed \_\_\_\_\_

Cust. Code: \_\_\_\_\_

STAMP DUTY USE ONLY	
DRS	AP 414
Vic Duty	\$4,120.00
Consideration	\$155,000.00
Trans No.	9929/2010
Endorse Date	05/05/2010
Section s57J (PPR)	Original
KATHARINEB Signature	

**THE BACK OF THIS FORM MUST NOT BE USED**  
 Land Registry, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

4415573 9781

**AH232156Q**

18/05/2010 \$501 45



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Dated:

4/5/10

Execution and attestation

Approval No. 325955A

**T2 Page 2**

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*Land Registry, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010*

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## ANNEXURE PAGE

### Transfer of Land Act 1958

Approved Form A1  
Victorian Land Titles Office

#### Panel Heading

"AND the said Transferees for themselves, their heirs, executor administrators and Transferees the registered proprietor or proprietors for the time being of the land hereby transferred and every part thereof (hereinafter referred to as "The Transferees") DO HEREBY and as a separate Covenant COVENANT with the said Transferor its successors, assigns and transferees and others the registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision No. 515599K and every part or parts thereof (other than the lot hereby transferred) that the Transferees will not, and the Transferees hereby Covenant that they will not:

- a) Erect or cause to be erected or allow to remain on the lot hereby transferred any dwelling other than one dwelling the plans for which have been approved by the transferor and having a clear floor area of not less than 18 squares including exterior walls but excluding verandahs, garages and outbuildings and with the outer walls thereof being constructed of brick, brick veneer or new weather board (excluding a portable home).
- b) Erect or construct a roof other than one which is constructed of tiles, slate or colourbond unless the type colour and materials are approved of in writing by the transferor.
- c) Erect or cause to be erected or allow to remain on the lot herein transferred any garage or carport other than a garage or carport which is of brick or brick veneer constructions;
- d) Erect or cause to be erected or allow to remain on the lot hereby transferred any other type of shed including garden shed of a size greater than four squares;
- e) Keep within the boundaries of the lot hereby transferred more than two of any species of animal or bird;
- f) Cause or allow the lot hereby transferred to be re-subdivided into small allotments either by way of Plan of Subdivision, Strata Subdivision or Cluster Titles.
- g) Erect or cause to be erected more than one dwelling house or allow the lot hereby transferred to be used as a road, access way, carriageway easement, cross over or for any other purposes whatsoever.
- h) Erect or construct the dwelling, garage or outbuilding within 5 meters of the front boundary of the lot hereby transferred.

Approval No. 18170111L

# A1



1. If there is insufficient space to accommodate the words "See Annexure Page 2" (or as the case may be) on the Annexure Page under the appropriate panel heading, the PAGE IS NOT TO BE USED.

2. If multiple copies of a mortgage are lodged, original Annexure Page must be attached to the original Form to which it is annexed.
3. The Annexure Pages must be properly identified and signed on the Form to which it is annexed.
4. All pages must be attached together by being stapled in the top left corner.

**AH232156Q** on RE  
18/05/2010 \$501 45 ch. red

# ANNEXURE PAGE

## Transfer of Land Act 1958

Approved Form A1  
Victorian Land Titles Office

### Panel Heading

- i) Erect or construct a fence on any part of the land whose boundaries adjoin any land owned by the transferor unless such fence is erected at a cost of no more than \$1.00 to the transferor.
- j) Erect or construct any fence on the side boundaries hereby transferred unless the materials are of brick, brick rendered, Colourbond or brush with timber capping. Fence colour to be Colourbond Domain, (if Colourbond fencing is used).
- k) Allow or cause the dwelling constructed on the lot hereby transferred to be used for display house purposes without the written consent of the transferor.
- l) For a period of 18 months from the date hereof erect or permit to be erected any notice, signboard or other display advertised or indicating that the lot is hereby transferred is or may be for sale provided that this covenant shall not apply to the advertising for sale of a house erected on the lot hereby transferred.
- m) Allow or cause any truck or heavy vehicle to be parked on the lot hereby transferred or in the street abutting or adjoining the lot hereby transferred.
- n) Allow the landscaping on the lot hereby transferred to deteriorate and to maintain the same on a quarterly basis.

AND it is intended that this Covenant shall appear as an encumbrance affecting the same and every part thereof on the Certificate of Title to be issued in respect to the lot hereby transferred.

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# AH232156Q

18/05/2010 \$501 45  


Approval No. 18170111L

# A1



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2. If multiple copies of a mortgage are lodged, original Annexure Pages must be attached to each.
3. The Annexure Pages must be properly identified and signed by the parties to the *Approved Form* to which it is annexed.
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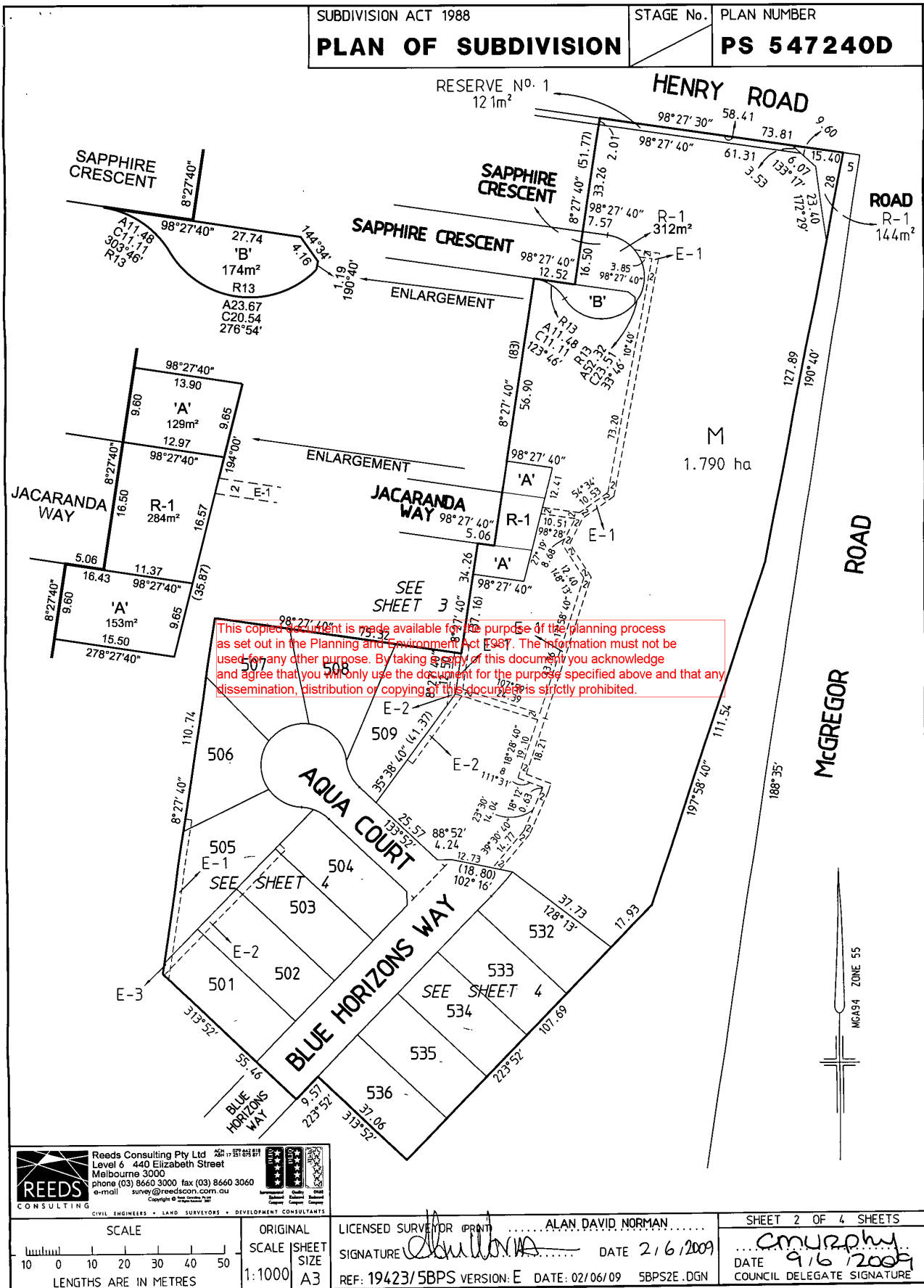
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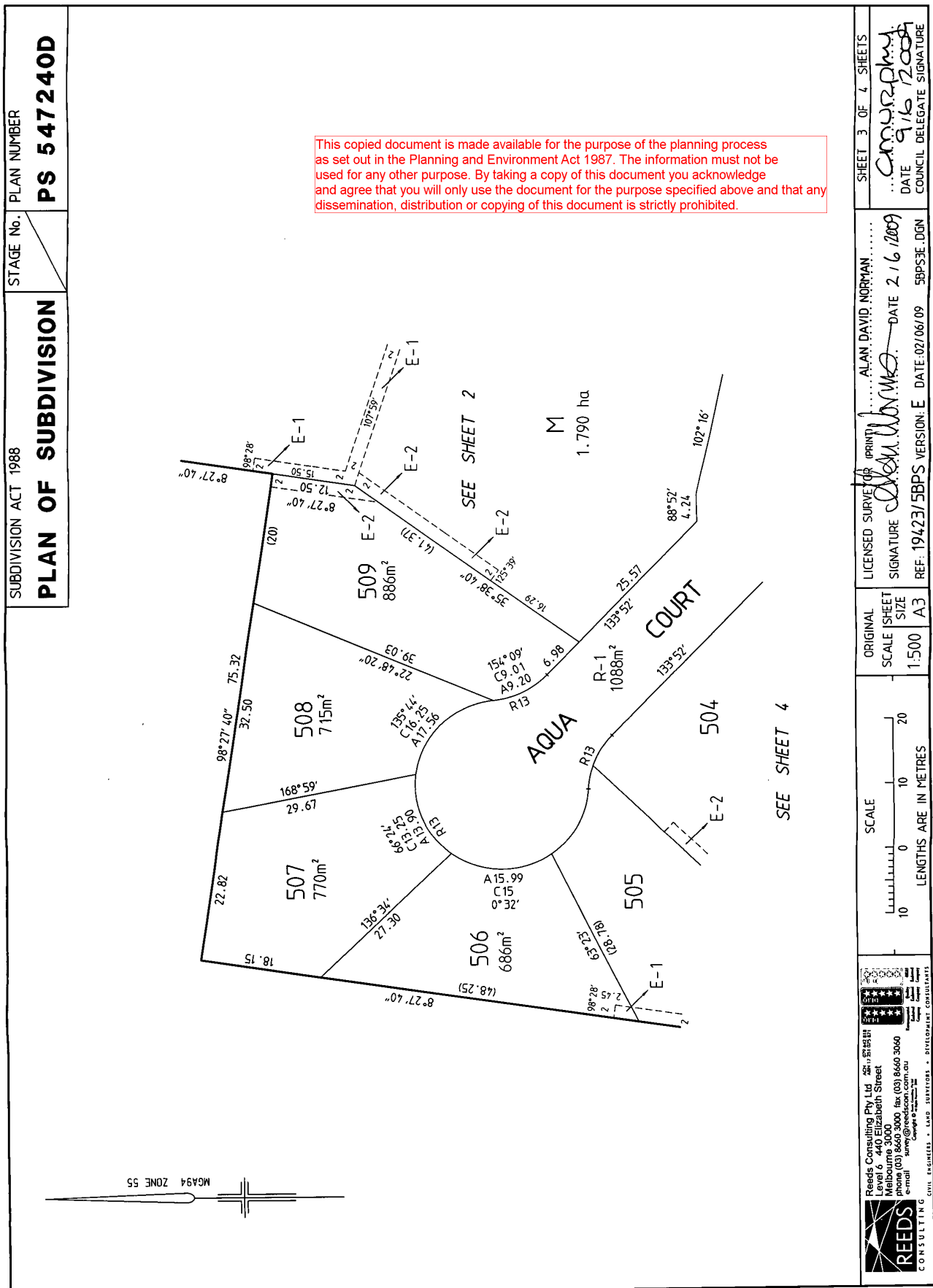
SUBDIVISION ACT 1988 <b>PLAN OF SUBDIVISION</b>		STAGE No.	LR USE ONLY <b>EDITION 2</b>	<b>PS547240D</b> 15/04/2010 \$2524.70 PS 
<b>LOCATION OF LAND</b> PARISH: NAR NAR GOON  TOWNSHIP: ----- SECTION: ----- CROWN ALLOTMENT: 51 <sup>6</sup> (PART) CROWN PORTION: ----- LTO BASE RECORD: D.C.M.B. TITLE REFERENCES: VOL. 11164 FOL. 773  LAST PLAN REFERENCE: PS 542159M LOT J POSTAL ADDRESS: JACARANDA WAY (at time of subdivision) PAKENHAM 3810  MGA CO-ORDINATES: E 365 840 ZONE: 55 (of approximate centre of land in plan) N 5 783 270			<b>COUNCIL CERTIFICATION AND ENDORSEMENT</b> COUNCIL NAME : CARDINIA SHIRE COUNCIL REF : 5061065 1. THIS PLAN IS CERTIFIED UNDER SECTION 6 OF THE SUBDIVISION ACT 1988. 2. <del>THIS PLAN IS CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988.</del> <del>DATE OF THE ORIGINAL CERTIFICATION UNDER SECTION 6</del> / / 3. <del>THIS IS A STATEMENT OF COMPLIANCE ISSUED UNDER SECTION 21 OF THE SUBDIVISION ACT 1988.</del> <b>OPEN SPACE</b> (i) A REQUIREMENT FOR PUBLIC OPEN SPACE UNDER SECTION 18 OF THE SUBDIVISION ACT 1988 HAS / <del>HAS NOT</del> BEEN MADE. (ii) <del>THE REQUIREMENT HAS BEEN SATISFIED.</del> (iii) <del>THE REQUIREMENT IS TO BE SATISFIED IN STAGE</del>  COUNCIL DELEGATE <i>cmurphy</i> <del>COUNCIL SEAL</del> DATE 9/6/2009  <del>RE-CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988</del> <del>COUNCIL DELEGATE</del> <del>COUNCIL SEAL</del> DATE / /	
<b>VESTING OF ROADS OR RESERVES</b>				
IDENTIFIER		COUNCIL / BODY / PERSON		
ROADS, R-1 RESERVE No. 1		CARDINIA SHIRE COUNCIL CARDINIA SHIRE COUNCIL		
<b>NOTATIONS</b>				
DEPTH LIMITATION: DOES NOT APPLY			STAGING THIS IS NOT A STAGED SUBDIVISION PLANNING PERMIT No.	
LOTS 1-500 (BOTH INCLUSIVE) AND 510-531 (BOTH INCLUSIVE) HAVE BEEN OMITTED FROM THIS PLAN. <div style="border: 1px solid red; padding: 5px; color: red; font-size: small;">           This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited.         </div>			THE LAND BEING SUBDIVIDED IS ENCLOSED WITHIN THICK CONTINUOUS LINES. SURVEY THIS PLAN IS BASED ON SURVEY  THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No (s) . ----- IN PROCLAIMED SURVEY AREA No. -----	
<b>EASEMENT INFORMATION</b>				<b>LR USE ONLY</b>
LEGEND: A - APPURTENANT EASEMENT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)				STATEMENT OF COMPLIANCE/ EXEMPTION STATEMENT
				RECEIVED <input checked="" type="checkbox"/>
EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED /IN FAVOUR OF
E-1, E-3	DRAINAGE	2	THIS PLAN	CARDINIA SHIRE COUNCIL
E-2, E-3	SEWERAGE	2	THIS PLAN	SOUTH EAST WATER LIMITED
				DATE 15 / 4 / 10  <b>LR USE ONLY</b> PLAN REGISTERED TIME 4:05 DATE 20 / 4 / 10  Randall McDonald ..... ASSISTANT REGISTRAR OF TITLES
				<i>...cmurphy...</i> DATE 9/6/2009 COUNCIL DELEGATE SIGNATURE
 Reeds Consulting Pty Ltd Level 6 440 Elizabeth Street Melbourne 3000 phone (03) 8660 3000 fax (03) 8660 3060 e-mail survey@reedscon.com.au Copyright © 2004 Reeds Consulting				LICENSED SURVEYOR (PRINT) ..... ALAN DAVID NORMAN ..... SIGNATURE <i>Alan David Norman</i> DATE 2/6/2009 REF: 19423/5BPS VERSION: E DATE: 02/06/09 5BPS1E.DGN
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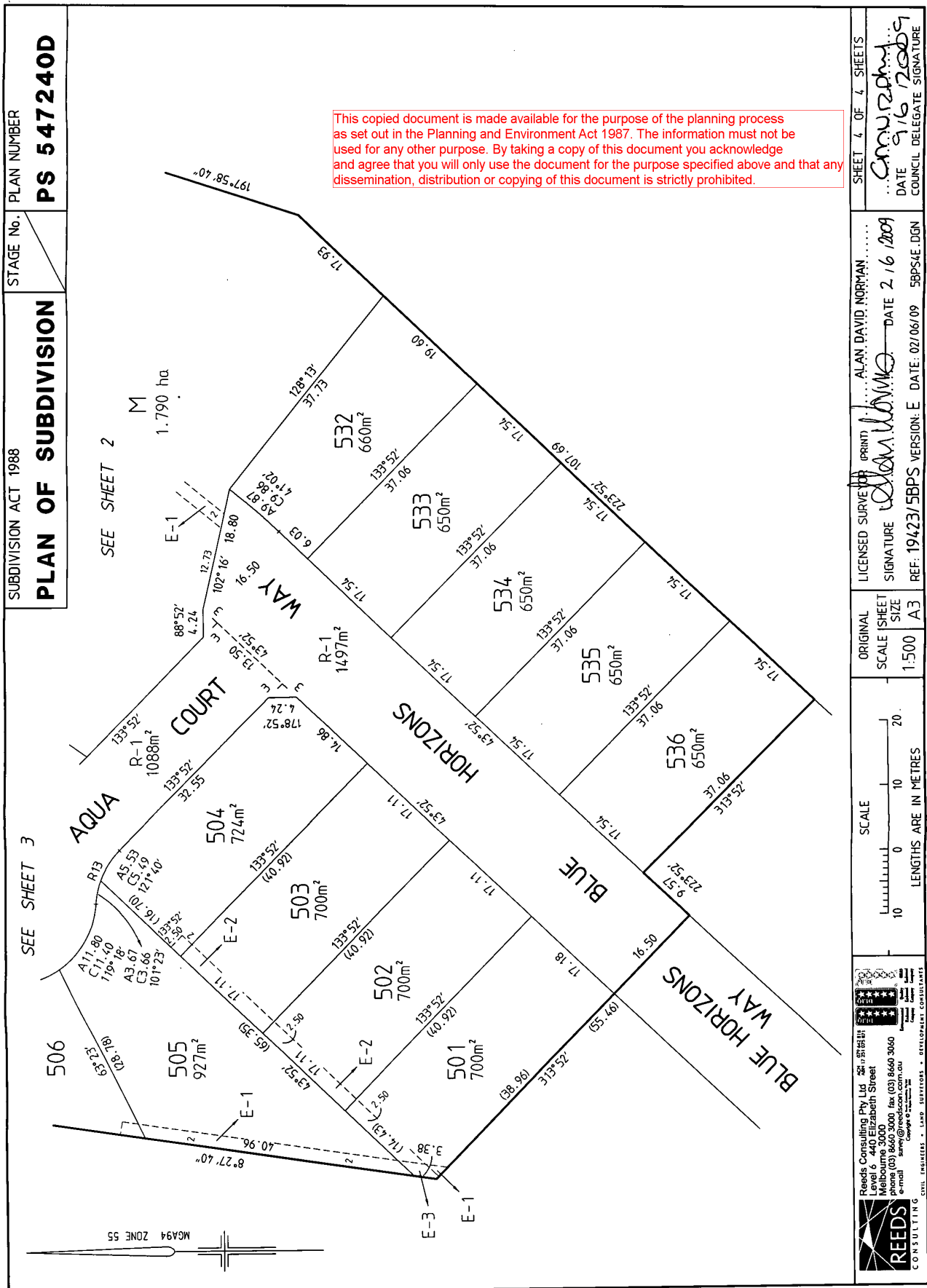


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## PS547240D

[illegible]

**FEIGL & NEWELL PTY. LTD.** A.B.N. 91 155 326 195  
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25/09/2024

**TO WHOM IT MAY CONCERN**

**RE PROPERTY: 151 BLUE HORIZONS WAY, PAKENHAM**

My name is Peter O'Loughlin, I am a Partner of the firm Feigl & Newell Pty Ltd, Title Searchers.

Our firm is considered to be experts in the field of Covenant Beneficiaries and we are retained by Barristers to brief them in these matters.

After careful perusal of the Covenant in Instrument of Transfer No.AH232156Q it would appear the beneficiaries are all the land within the borders highlighted yellow on the attached digital map base. The land highlighted blue has the burden of said Covenant.

I came to this conclusion as the intent of the covenant in Instrument of Transfer No.AH232156Q is that the beneficiaries are the Registered Proprietor or Proprietors for the time being of the land comprised in the said Plan of Subdivision No.547240D and every part or parts thereof (other than the lot hereby transferred).

Please advise if any further information is required.

Yours faithfully,



Postal Address: P.O. Box 76 St Kilda VIC 3182  
 Telephone: 03 9629 3011 Email: info@feignewell.com.au Website: www.feignewell.com.au



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## 5.2 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATED AUTHORITY - JUNE 2025

Responsible GM:	Debbie Tyson
Author:	Jason Gilbert
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	<b>5.1 We practise responsible leadership</b> 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

### Recommendation

That Council note the 'Planning Matters Dealt with by Officers Under Delegated Authority – June 2025' report.

### Executive Summary

The following matters have been dealt with under delegated powers since the last report to Council.

### Planning Matters Report

Refer to tables on the following pages, which cover the period between 14 April 2025 and 18 May 2025.

### Attachments

Nil

**Beacon Hills Ward**

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T230424	Shop 1/52 Old Princes Highway, Beaconsfield VIC 3807	Construct or put up for display three (3) signs (internally illuminated above verandah sign, above verandah sign and a business identification sign)	Refused	25/08/2023	14/04/2025
T240327	15 Shelton Road and Bourkes Creek Road, Pakenham Upper VIC 3810	Subdivision of Land into Two (2) Lots (Boundary Re-Alignment) and Creation of a Restriction	Issued	16/07/2024	14/04/2025
T240189	100 Gembrook-Tonimbuk Road, Gembrook VIC 3783	Buildings and works for an outbuilding	Issued	28/04/2024	15/04/2025
T240448	215 Old Gembrook Road, Pakenham Upper VIC 3810	Buildings and works for a dwelling extension	Issued	9/09/2024	16/04/2025
T240454	40 Toogood Court, Pakenham Upper VIC 3810	Buildings and works for an outbuilding and associated earthworks	Issued	11/09/2024	17/04/2025
T240630	88 Armytage Road, Officer VIC 3809	Buildings and Works (Construction of Five Outbuildings, Extensions to an Existing Outbuilding and Associated Earthworks)	Issued	27/11/2024	23/04/2025
T240054	80 Gordon Road, Pakenham Upper VIC 3810	Buildings and works (Construction of a replacement dwelling) and removal of vegetation	Issued	13/02/2024	29/04/2025
T240379 - 1	33 Sugarloaf Road, Beaconsfield Upper VIC 3808	S72 Amendment to Alter the Approved Plans (Decrease Setbacks)	Issued	19/12/2024	30/04/2025
T240431	135 Officer Road, Officer VIC 3809	Buildings and Works (Construction of a Shed)	Issued	29/08/2024	1/05/2025
T240471	42 Payne Road, Beaconsfield VIC 3807	Construction of a Replacement Dwelling, Construction, Use and Illumination of a Private Tennis Court and Removal of Vegetation	NOD	1/10/2024	9/05/2025
T250133	54 Hoyles Road, Pakenham Upper VIC 3810	Buildings and works for an agricultural building	Issued	3/03/2025	16/05/2025

## Bunyip Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T030219 - 1	22 A'Beckett Road, Bunyip VIC 3815	Buildings and works associated with a Residential Aged Care Facility	Issued	20/02/2025	17/04/2025
T240329	170 Nash Road, Bunyip VIC 3815	Subdivision of land into two (2) lots	Issued	17/07/2024	17/04/2025
T250163	79 Wattletree Road, Bunyip VIC 3815	Alterations and Additions to an Existing Dwelling (Construction of a Garage)	Issued	19/03/2025	22/04/2025
T240006 - 1	90 Mount Ararat South Road, Nar Nar Goon VIC 3812	Removal of native vegetation under Clauses 52.16 and 52.17 within the Mount Ararat South Road, Princes Freeway and Princes Highway Road Reserves, in accordance with the endorsed plan	Issued	6/03/2025	23/04/2025
T240263	FY 10/14-17 Hogan Court, Pakenham VIC 3810	Use of Land for Car Sales	Issued	14/06/2024	24/04/2025
T240575	12 Ravendene Court, Maryknoll VIC 3812	Removal of Native Vegetation (Two Trees)	Issued	3/11/2024	28/04/2025
T240008 - 1	1530, 1550, 1570 & 1610 Princes Hwy, 105 Canty Lane and Princes Highway Road Reserve, NAR NAR GOON VIC 3812	Amendment to Planning Permit T240008: Subdivision of land in stages, subdivision of land adjacent to a road in a Transport Zone 2 and the removal of native vegetation	Issued	23/01/2025	29/04/2025
T240592	15 Crichton Road, Gembrook VIC 3783	Buildings and Works (Construction of an Agricultural Building)	Issued	14/11/2024	29/04/2025
T240206	525 Tynong North Road, Tynong North VIC 3813	Buildings and Works (Construction of a Shed)	Issued	6/05/2024	15/05/2025
T250181	9 Ryan Road, Pakenham VIC 3810	Buildings and Works (Construction of an Outbuilding)	Issued	26/03/2025	15/05/2025
T240543	240 Bessie Creek Road, Nar Nar Goon North VIC 3812	Buildings and Works (Construction of a Shed)	Issued	15/10/2024	16/05/2025
T250126	41 Shinnars Close, Bunyip VIC 3815	Buildings and works (construction of an outbuilding)	Issued	27/02/2025	16/05/2025

## Central Ward

None



## Henty Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240632	13 Monterey Way, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	27/11/2024	22/04/2025
T240612	5 Kookaburra Rise, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	20/11/2024	23/04/2025
T240450	FY 1/15 , 2/15 3/ 15 Bald Hill Road, Pakenham VIC 3810	Use and Development of Land for Motor Vehicle Sales (Motor Vehicle Hire) and Construction and Display of Advertising Signage	Issued	9/09/2024	24/04/2025
T240619	4 Monterey Way, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	22/11/2024	1/05/2025
T240637	7 Kookaburra Rise, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	29/11/2024	1/05/2025
T240638	13 Scenic Rise, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	2/12/2024	1/05/2025
T240684	1 Scenic Rise, Pakenham VIC 3810	Buildings and works (Construction of a Dwelling and a Fence)	Issued	18/12/2024	7/05/2025
T250047	4 Kookaburra Rise, Pakenham VIC 3810	Buildings and works (Construction of a Dwelling and a Fence)	Issued	2/02/2025	12/05/2025
T240656	13 Creek Circuit, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	4/12/2024	13/05/2025
T250005	6 Scenic Rise, Pakenham VIC 3810	Buildings and works (Construction of a Dwelling and a Fence)	Issued	7/01/2025	13/05/2025
T240606	9 Kookaburra Rise, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	19/11/2024	15/05/2025
T240654	12 Kookaburra Rise, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	3/12/2024	15/05/2025

## Officer Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T230119	Princes Highway, Officer VIC 3809	Subdivision of land and associated works, removal of waterbodies and native vegetation and subdivision of land adjacent to a road in a Transport Zone 2 and creation of access to a road in a Transport Zone 2.	Issued	21/03/2023	16/04/2025
T220623	432 Princes Highway & 2 Station Street, Officer VIC 3809	Development of the land for Offices and reduction in car parking requirements	Issued	13/09/2022	29/04/2025

### Pakenham Hills Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T220711	166 Pakenham Road, Pakenham VIC 3810	Construction of Fifteen (15) Dwellings on a Lot, Removal of Native and Other Vegetation and Removal of Easement	NOD	26/10/2022	6/05/2025

### Ranges Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240358	37 Avon Road, Avonsleigh VIC 3782	Buildings and works (outbuilding) and removal of one (1) tree	Issued	26/07/2024	15/04/2025
T210938 - 1	1 Mary Street, Emerald VIC 3782	Demolition and construction of outbuildings, alterations and additions to the existing dwelling, outbuildings, front fence and associated works	Issued	24/10/2024	23/04/2025
T210373 - 1	1 Main Street, Gembrook VIC 3783	Amendments to Planning Permit T210373 (Issued for Buildings and works associated with the construction of an agricultural building) to amend the permit preamble to delete reference to agricultural building and replace with use and development of the land for a dwelling, construction of a carport, vegetation removal and access to a Transport Zone 2, and delete condition 9	Issued	20/09/2024	28/04/2025
T240442	19 Kilvington Drive, Emerald VIC 3782	Use of the Land for the Sale and Consumption of Liquor	Issued	30/08/2024	2/05/2025
T250116	155 Belgrave-Gembrook Road, Cockatoo VIC 3781	Buildings and works (construction of an outbuilding (garage) and three water tanks)	Issued	20/02/2025	2/05/2025
T250125	6 Lawsons Road, Emerald VIC 3782	Buildings and works (construction of an outbuilding)	Issued	26/02/2025	6/05/2025
T240419	186 Beenak Road, Gembrook VIC 3783	Use of Land for a Residential Building (Short Stay/Visitor Accommodation)	NOD	21/08/2024	8/05/2025
T240672	2555 Gembrook-Launching Place Road, Gembrook VIC 3783	Partial demolition and buildings and works (alterations) associated with three (3) amenities blocks	Issued	12/12/2024	12/05/2025
T250180	3 Beenak East Road, Gembrook VIC 3783	Buildings and Works (Construction of an Outbuilding)	Issued	26/03/2025	12/05/2025

**Toomuc Ward**

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240346 - 1	66 Thewlis Road, Pakenham VIC 3810	Amended plans as required by Condition 1, amended plans as required by Condition 4 except for part 4 (f)(1) - the 1.5 metre wide landscape setback at the frontage to be provided partly onsite and partly on the road reserve and amend condition 4 (f)(1) accordingly. Delete condition 4 (g), amend Condition 2 to allow development to commence when the plan of subdivision is certified, Amend condition 30 by replacing 7.00 am with 6.30am. Tree Management Plan as required by Condition 9. The above is described in submission dated 13 March 2025	Issued	13/03/2025	6/05/2025
T220656	22 Purton Road, Pakenham VIC 3810	Buildings and works (10 warehouses and 8 stores), use of land for Warehouse (including Store) and a reduction to the number of car parking spaces required	NOD	10/10/2022	7/05/2025
T250022	28 Skyline Drive, Officer VIC 3809	Buildings and works (dwelling) in Significant Landscape Overlay - Schedule 6	Issued	15/01/2025	8/05/2025
T240499	66 Thewlis Road & 15 Cemetery Road, Pakenham VIC 3810	To subdivide the land in stages.	Issued	30/09/2024	12/05/2025

**Westernport Ward**

<b>Permit Number</b>	<b>Address</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date Lodged</b>	<b>Date of Decision</b>
T240521	37 Advance Boulevard, Officer South VIC 3809	To construct a building and carry out works associated with warehouse use	Issued	4/10/2024	14/04/2025
T240520	33 Advance Boulevard, Officer South VIC 3809	Construct buildings and works associated with warehouse use	Issued	4/10/2024	15/04/2025
T240026	24 Whitstable Street, Lang Lang VIC 3984	Use of Land for Dog Breeding and Buildings and Works (Construction of a Fence)	NOD	24/01/2024	15/04/2025
T240522	1590 Koo Wee Rup-Longwarry Road, Catani VIC 3981	Buildings and works for an extension to a dwelling	Issued	4/10/2024	17/04/2025
T240666	295 Cardinia Road, Officer South VIC 3809	Development of land for two (2) warehouses, ancillary offices and reduction of car parking requirement	Issued	10/12/2024	17/04/2025
T240668	295 Cardinia Road, Officer South VIC 3809	Development of land for two (2) warehouses, ancillary offices and reduction of car parking requirement	Issued	10/12/2024	17/04/2025
T250029	25 Advance Boulevard, Officer South VIC 3809	Construct a building or construct or carry out works for a warehouse	Issued	22/01/2025	23/04/2025
T250121	37 Axis Boulevard, Officer South VIC 3809	Construct a building or construct or carry out works for twelve (12) warehouses	Issued	25/02/2025	23/04/2025
T240312	25 Henry Street, Koo Wee Rup VIC 3981	Construction of Second Dwelling on a Lot and Subdivision of Land into Two Lots	Issued	28/06/2024	24/04/2025
T220323 - 1	18 Link Road, Pakenham VIC 3810	Amendment to Planning Permit T220323 (issued for Building and works for construction of seven (7) warehouses and ancillary offices and reduction in car parking, generally in accordance with the approved plans) to amend what permit allows and amend the endorsed plans	Issued	21/10/2024	1/05/2025
T240629	71 Greenhills Road, Pakenham VIC 3810	Buildings and works for a warehouse and reduction of car parking requirements	Issued	27/11/2024	1/05/2025
T240250	92 Enterprise Road & Henry Rd, Pakenham VIC 3810	Subdivision of land adjacent to a road in a Transport Zone 2, creation of easements including carriageway easement, construct a minor utility installation and associated works	Issued	6/06/2024	6/05/2025
T250129	130 Greenhills Road & 975 Koo Wee Rup Road, Pakenham VIC 3810	Subdivision of land (boundary realignment)	Issued	28/02/2025	8/05/2025

T240384	60 Greenhills Road, 955 Koo Wee Rup Road & 975 Koo Wee Rup Road, Pakenham VIC 3810	Bulk Earthworks	Issued	6/08/2024	12/05/2025
T250044	7 Link Road, Pakenham VIC 3810	Buildings and Works (Construction of a Warehouse)	Issued	31/01/2025	13/05/2025
T240586	61 Greenhills Road, Pakenham VIC 3810	Building and Works (Construction of a Warehouse) and a Reduction to the Number of Car Parking Spaces Required	Issued	11/11/2024	15/05/2025

## 5.3 PLANNING MATTERS VCAT REPORT - JUNE 2025

Responsible GM:	Debbie Tyson
Author:	Jason Gilbert
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	<b>5.1 We practise responsible leadership</b> 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

### Recommendation

That Council note the 'Planning Matters VCAT Report – June 2025' report.

### Executive Summary

The following list is presented to keep Council informed of applications that are currently the subject of appeals proceedings and recent decisions from the Victorian Civil and Administrative Tribunal (VCAT). This list is current as of 19 May 2025.

### Attachments

Nil



### Matters Recently Lodged at VCAT

Hearing Date	App. No.	Address	Proposal	Council Decision	Appealed By
5-7 November 2025	T220800	315 Pooley Road, Nar Nar Goon North	Use and Development of Land for Rural Worker Accommodation and a Small Second Dwelling, and Removal/Lopping of Native Vegetation	Refusal	Applicant

### Matters Currently the Subject of VCAT Appeal

Hearing Date	App. No.	Address	Proposal	Council Decision	Appealed By
20/8/2025	T240181	35 Canty Lane, Pakenham	Subdivision of land and associated works, and removal of native vegetation	FTD	Applicant
20/8/2025	T230589	215 Evans Road, Longwarry	Use of land for a Dwelling and Buildings and Works (Construction of a Dwelling, Shed and Associated Earthworks)	Refusal	Applicant
22/07/2025	T240177	80 O'Briens Road, Yannathan	Use and Development of land for Dwelling, Outbuilding and Associated works	Refusal	Applicant
14-15/05/2025	T210341	209 Berglund Road, Beaconsfield Upper	Use and development of the land a dwelling, outbuilding and removal of native vegetation	Refusal	Applicant
8-10/04/2025	T230342	565 Murray Road, Vervale	Use of the land for Rural Industry (mud brick manufacturing)	Notice of Decision to Grant a Permit	Objector
29/04/2025	T230499	1 Outlook Road, Emerald	Buildings and Works (Construction of a Garage and Earthworks) and Vegetation Removal	Refusal (FTD)	Applicant
25 & 26/06/2025	N/A	67 Officer South Road, Officer	N/A – Application for declaration in relation to the Officer Major Activity Centre Urban Design Framework	UDF adopted	Developer

\*FTD denotes an application for review of Council's failure to issue a decision within the prescribed timeframe.

**Matters Recently Decided at VCAT**

App. No.	Address	Proposal	Council Decision	Appealed By	Outcome	Decision Date
T230472	1610 Princes Highway, Nar Nar Goon	Staged subdivision of land and removal of native vegetation	Refusal	Applicant	Permit (via consent)	2/05/2025
T230472	1610 Princes Highway, Nar Nar Goon	Staged subdivision of land and removal of native vegetation	Refusal	Applicant	Permit (via consent)	2/05/2025
T230359	225 Bladens Road, Koo Wee Rup	Use of land for a Dwelling and Buildings and Works (Construction of a Dwelling and Outbuilding)	FTD	Applicant	Withdrawn	14/05/2025

## 5.4 PLANNING SCHEME AMENDMENT ACTIVITY - JUNE 2025

Responsible GM:	Debbie Tyson
Author:	Marcelle Bell
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	<b>5.1 We practise responsible leadership</b> 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

### Recommendation(s)

That Council note the 'Active Planning Scheme Amendments' report in Table 1.

### Executive Summary

This report provides an update on the status of active Planning Scheme Amendments and planning scheme amendment requests received.

### Status of Active Amendments

Table 1 details the status of active Planning Scheme Amendments being processed as of 7 May 2025.

**Table 1: Planning Scheme Amendment Activity**

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
<b>C278</b>	Cardinia Shire Council	Municipal wide	Introduces a new Environmentally Sustainable Development (ESD) local policy (Clause 22.11) and makes associated changes to the Municipal Strategic Statement (MSS).	29/02/24	8/04/24	<ul style="list-style-type: none"> <li>Council endorsed to seek authorization from the Minister for Planning to prepare proposed Amendment C278card on the 20/03/2023.</li> <li>Council received the Ministers authorization on the 23/10/2023 to prepare the proposed Amendment C278card.</li> <li>The proposed Amendment was placed on public exhibition from the 29/02/2024 until the 8/04/2024. Council received five submissions to the proposed Amendment C78card.</li> <li>On the 17 June 2024 Council considered the submissions made to C278card and endorsed referring the submissions to a Planning Panel appointed by the Minister for Planning.</li> <li>A Planning Panel Hearing was held on the 26/8/2024 and Council received the Panel report on the 6/09/2024.</li> <li>On the 16/12/2024 Council adopted the proposed Amendment C278card with changes based on the Panel Report and to submit the adopted Amendment to the Minister for Planning for approval.</li> <li>On the 23 December 2024, a Council officer submitted the Amendment to the Minister for Planning for approval.</li> </ul>
<b>C282</b>	James Hicks Pottery Pty Ltd	Lot AA PS814723 Cotswold Crescent, Officer	Planning Scheme Amendment and concurrent planning permit under Section 96A of the Planning and Environment Act 1987 to amend the Schedule to the	To be determined	To be determined	On the 16 June 2025, Council will consider writing to the Minister for Planning and requesting the Minister for Planning authorise Council to prepare Amendment C282card concurrently with a planning permit application T230528 under Section 96A of the Planning and Environment Act 1987.

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			Heritage Overlay (Clause 43.01) to allow Council to consider a prohibited use under the Heritage Overlay (H0104) for an office.			
<b>C283</b>	Cardinia Shire Council	Municipal wide	Section 20(4) Amendment to make corrections of anomalies and errors (Fix-Up Amendment).	To be determined	To be determined	<p>On the 14 April 2025 Council considered proposed Amendment C283card to seek authorisation from the Minister for Planning to prepare and exercise her Ministerial powers of intervention pursuant to Section 20(4) of the Planning and Environment Act to approve Amendment C283card.</p> <p>An alternate resolution was supported by the Council. Council resolved to not proceed with Amendment C283card to the Cardinia Planning Scheme until such time as:</p> <ol style="list-style-type: none"> <li>1. The results of the Agricultural Audit undertaken in 2024 are formally reported to Council and the community at a future Council Meeting.</li> </ol>
<b>C284</b>	Cardinia Shire Council	Crown Allotment 2001 next to Pakenham Cemetery	Section 20(2) Amendment to rezone former road reserve known as Crown Allotment 2001 from Urban Growth Zone Schedule 1 (UGZ1) to Public Use Zone Schedule 5 (PUZ5).	To be determined	To be determined	<p>On the 14 April 2025 Council endorsed writing to the Minister for Planning and request:</p> <ol style="list-style-type: none"> <li>1. The Minister for Planning authorises Council to prepare Planning Scheme Amendment C284card to the Cardinia Planning Scheme pursuant to Section 8 of the Planning and Environment Act 1987 and for the Minister to act as the Planning Authority for the proposal.</li> <li>2. The Minister for Planning exercises the Ministerial powers of intervention pursuant to Section 20(2) of the Planning and Environment Act 1987 and direct Council to notify any potentially impacted owners and occupiers of land immediately adjacent to the east of the proposed rezoning of land included in the Amendment C284card proposal, exempting herself and Council from any other public notice requirements pursuant to the relevant provisions set out in Sections 17, 18 and 19 of the <i>Planning and Environment Act 1987</i></li> <li>3. The Minister for Planning approves Amendment C284card pursuant to Section 35 of the <i>Planning and Environment Act 1987</i>.</li> </ol>

**6 Meeting Closure**